IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.3 of 2013

M/s. Kandoi Automobiles Pvt. Ltd. .... ***Petitioner***

Mr. Jagabandhu Sahoo, Sr. Advocate with
Ms. Kajal Sahoo, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. Susanta Kumar Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
30.11.2022

Order No.

07. 1. The present revision petition arises from an order dated 14th September, 2012 of the Odisha Sales Tax Tribunal (Tribunal), Cuttack in S.A. No.11 of 2011-12 which was an appeal by the present Petitioner Assessee directed against an order dated 29th January, 2011 by the Deputy Commissioner of Sales Tax, Cuttack II Range, Cuttack (in short, DCST) in Sales Tax Appeal No.AA.102/CUII/2006-07 for the Assessment Year 2002-03.

2. While admitting this revision petition on 10th April, 2017, the following questions were framed for consideration:

a) *"Whether in terms of F.D. Notification dated 31st March, 2001 (No.32008-CTA_116/95-F) issued under Section 5(1) of the OST Act, levy of tax @ 12% in lieu of 8%, by the* *learned Tribunal upholding assessment made is lawful and proper?*

b) *Whether the entire turnover (gross turnover) relating to tyre retreading involving processing of pneumatic tyres is liable to be taxed as Taxable Turnover within the scope of Section 5(2) (A) (a) of the OST Act?"*

3. In the meanwhile, involving the same assessee very recently on 25th August, 2022, the Full Bench of the Tribunal has passed an Order in appeal filed by the Department being S.A. No.82 of 2012-13 for the same AY 2002-03, where more or less the same questions appear were involved. While the said order was in appeals arising from the original assessment proceedings, the appeal in which the impugned order of the Tribunal was passed were proceedings emanating under Section 12 (8) of the Orissa Sales tax Act (OST Act).

4. *Inter alia,* it is seen that the change in the position after the enactment of the Odisha Value Added Tax Act, 2004 (OVAT Act) was taken into account and the corresponding changes in the deduction towards labour and service charges including wages, establishment expenses etc. has also been taken note of by the Full Bench.

5. In that view of the matter, with a view to ensuring consistency in the approach to the issues by the Tribunal, the Court is of the view that it should revisit the questions that arose for consideration in the appeal in question afresh in light of the aforementioned judgment of the Full Bench which involved the same Assessee and the for the same AY 2002-03.

6. Accordingly, the impugned order dated 14th September, 2012 of the Tribunal is set aside and S.A. No.11 of 2011-12 is restored to the file of the Tribunal, where it will be listed for directions on 17th January, 2023. On that date the authorized representative of the Petitioner will appear together with a downloaded copy of this order. The questions framed by this Court Fin this petition for consideration will be now addressed by the Tribunal in light of the judgment dated 25th August, 2022 of the Full Bench of the Tribunal in S.A. No.82 of 2012-13.

7. The STREV is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Aks/Laxmikant